IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7735 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the order? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the order? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUSHILABEN VASANTBHAI RANDERI

Versus

ABHAYKUMAR PANACHAND SUKHADIA

Appearance:

MR ASPI M KAPADIA for Petitioner No. 1

MR AS VAKIL for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 16/08/2002

ORAL ORDER

1 The petitioner is the original-defendant in Civil Suit No.53 of 2002. The petitioner purchased a property bearing survey no.1630 situated in ward no.10 of the city of Surat from one Shri Jivanchandra Chunilal Zaveri alongwith tenant, one Shri Panachand Lallubhai of M/s. Hemchand Virchand. The case of the petitioner is that thereafter on 1.12.1997, the property was leased out to

one Shri Rohitbhai Lakadawala on monthly rent of Rs.250/-, because the original tenant, viz. the respondent herein, had relinquished the tenancy rights and handed over possession to the petitioner-defendant. It is further stated by the petitioner that Shri Rohitbhai Lakadawala also relinquished the tenancy rights in respect of the property on 1.12.1988, and since then the petitioner was having possession of the property.

2 As against this the respondent has raised a dispute that on night of 19.1.2002, when the respondent along with his family members was out-of-station, the petitioner, accompanied by her husband, seized the possession of the property by breaking open lock and throwing out goods, etc. lying in the premises. The respondent herein filed Regular Civil Suit No. 53 of 2002 in the Court of Joint Civil Judge (S.D), Surat and made an application seeking interim relief under Exhibit 5. The said application came to be decided on 22.7.2002 and the said order is challenged seeking the following reliefs :

"(A) to quash and set aside the impugned Order dated 22.07.2002 passed by the Sixth Joint Civil Judge (Senior Division), Surat below Application Exhibit 5 in Regular Civil Suit No. 53 of 2002.

(B) to stay, pending hearing and final disposal of this petition, the operation, implementation and execution of the aforesaid impugned order".

3 Mr.A.M.Kapadia, learned Advocate for the petitioner contended that the Trial Court has erred in passing the impugned order without appreciating the correct position in law. That the Trial Court has not considered the aspect regarding balance of convenience before passing the impugned order and this was a relevant factor which had material bearing in relation to the application below Exhibit 5. Mr.Kapadia also submitted that it was not permissible for the Trial Court to pass the mandatory order directing the petitioner to hand over possession of the property at an interim stage. It was also submitted on behalf of the petitioner that the suit was under Section 6 of the Specific Relief Act, 1963 and in these circumstances, before making the order the Trial Court ought to have taken into consideration that the petitioner would be left without any remedy even if ultimately the suit is dismissed, because the petitioner would have to file the suit for restitution if the respondent plaintiff did not hand over possession of the property. Mr.Kapadia cited two decisions in support of

the proposition that the High Court had wide powers under Article 227 of the Constitution of India vis-a-vis the provision of Section 115 of the Code of Civil Procedure,1908. It was also submitted that under Article 227 it was open to the High Court to intervene in the order of Trial Court when it had recorded a finding of fact which was not supported by the material on record. It was also submitted that the order granting interim relief should not render any one party remediless, which the impugned order would result into.

4 As against this, Mr.A.S.Vakil appearing on Caveat submitted that not only that there was no error in the order of the Trial Court but the Trial Court had taken into consideration the basic principles, viz. the aspect of prima facie case and balance of convenience as well as hardship before passing the impugned order. Mr.Vakil relied upon various decisions of this Court in support of the proposition that the powers of the High Court under Article 227 are supervisory in nature and the Court was not expected to exercise the same like an Appellate Court. He also relied upon the decision of this Court in case of Ramesh Devchand Pala Vs. Jayantkumar Gordhandas Madani and others, A.I.R. 1998(Guj) 120, in support of the proposition that the Court has power to grant interim relief of restoration of possession.

5 There is no dispute as to the fact that the petitioner became the owner of the property when she purchased the property some time in June 1997. It is also admitted on behalf of the petitioner-defendant that when the property was purchased it was tenanted and the tenant was none other but the respondent (original plaintiff). The respondent has disputed the fact that it had relinquished the tenancy at any time and in this connection it has been found by the Trial Court that the petitioner-defendant who had put up this case, has not been able to point out as to how and when the respondent plaintiff had vacated the premises and handed over possession to the petitioner-defendant. The Trial Court has further found that if the say of the petitioner-defendant was correct there would be no occasion to take forcible possession of the premises on 1.12.1998 by breaking open the lock and for this purpose the evidence by way of complaint and FIR lodged with Athwalines Police Station has been taken into consideration by the Trial Court. For the present purpose, it is not necessary to enter into a detailed discussion and analysis of the various factors which the Trial Court has taken into consideration. Suffice it to state that it is not possible for this Court to hold that

any relevant fact, material for the purpose of deciding the controversy between the parties, has been omitted from consideration by the Trial Court before arriving at the impugned decision, nor is it possible to state that any irrelevant fact has been taken into consideration.

6 The scope of powers and the jurisdiction to be exercised under Article 227 has been laid down time and again by the Apex Court. Following decisions summarise what are the parameters laid down by the Supreme Court :

6.1. Achutananda Baidya Vs. Prafullya Kumar Gayen and others, AIR 1997 SC 2077.

"10. The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Art. 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the judgment of the subordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.

11. If the evidences on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior Court or Tribunal, such finding must be held to be perverse and lacking in factual basis.

In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact."

6.2 State of Maharashtra Vs. Millind and others, A.I.R.2001 at page 408 :

"The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record xxx xxx "

6.3 Estralla Rubber Vs. Dass Estate (P) Ltd.,(2001) 8 SCC 97.

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of

the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or tribunal has come to.

7. This Court in Ahmedabad Mfg. & Calico Ptg.Co.Ltd. v. Ram Tahel Rammand in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh vs. Amarnath. This Court in Bathutmal Raichand Oswal vs. Laxmibai R.Tarte has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal xxx xxx xxx"

7 The approach as to how an order of the Trial Court has to be read has been enunciated by the Apex Court in the case of Homi Jehangir Gheesta vs. Commissioner of Income Tax, AIR 1961 SC 1135 in the following words :

"In considering whether any question of law arises from the order of the Tribunal on a question of fact, the order of the tribunal has to be read as a whole to determine whether every material fact, for and against the assessee, has been considered fairly and with due care, whether evidence pro and con has been considered in reaching the final conclusion, and whether the conclusion reached by the Tribunal has been coloured by irrelevant considerations or matters of prejudice. The order of the Tribunal is not to be examined sentence by sentence, through a miscroscope as it were, so as to discover a minor lapse here or an incautious opinion there to be used as a peg on which to hang an issue of law xxx xxx xxx "

8. Applying the aforesaid tests it is not possible to find any infirmity with the order of the Trial Court which would permit this Court to exercise the extra ordinary jurisdiction in favour of the petitioner. The Trial Court has considered every evidence, pro and con, placed before it; no relevant evidence is ignored, nor has any irrelevant evidence been considered. It is not even the petitioner's case that the Trial Court has acted without jurisdiction or in excess of jurisdiction. No apparent error of law has been committed by the Trial Court. In these circumstances, what weightage should be attached to a particular factor is within the domain of the Trial Court and this Court cannot sit like a Court of appeal to reappreciate the evidence while exercising its supervisory jurisdiction.

9. A contention was raised on behalf of the petitioner during the course of hearing that in light of the amendments in Section 115 of the Code of Civil Procedure, this Court should exercise jurisdiction under Article 227 in case of gross violation of principles of natural justice. There can be no dispute as regards the said proposition but this is not a case where it can be stated that any gross injustice has resulted by virtue of the impugned order. The learned Advocate also submitted that as the remedy under Section 115 of the Code of Civil Procedure has been restricted now, this Court should exercise jurisdiction under Article 227 of the Constitution of India in that context, namely, expand the scope of its jurisdiction under Article 227. This contention requires to be stated to be rejected. Once the legislature in its wisdom has amended the provision of Section 115 of the Code of Civil Procedure and restricted the scope of interference by this Court, an exercise which negates the amendment cannot be undertaken; what is not permissible directly cannot be done indirectly. The Court has to bear in mind the purpose and intent of the amendment.

10. The power of the Trial Court under Section 6 of the Specific Relief Act,1963 has been explained by this Court in the aforesaid decision in case of Ramesh Devchand Pala Vs. Jayantkumar Gordhandas Madani and others, AIR 1998 (Guj) 120.

> "The Court has ample power under S.6 of the Specific Relief Act, to grant interim relief by directing to restore the possession which existed immediately before filing of the suit i.e.,

before the alleged act of removal by unlawful means. However, such power is to be exercised by the Court with great care and caution and only in the rare and exceptional case. The plaintiff is required to show more than just prima facie case that he was in lawful possession of the subject premises just before he was evicted unlawfully".

11. If this aspect is borne in mind along with the aforesaid legal position the petitioner has failed to make out any case which requires this Court to interfere with the impugned order dated 22.7.2002.

12. In light of what is stated hereinbefore the petition stands rejected.

Sd/-

(D.A.Mehta, J)

m.m.bhatt